

MELVIN FRANZEN
H. DIANE GOLBY

IBLA 85-573

Decided May 6, 1986

Appeal from a decision of the California State Office, Bureau of Land Management, declaring mining claim CA MC 75617 null and void ab initio.

Affirmed.

1. Acquired Lands -- Mining Claims: Lands Subject to

Lands which were acquired under the Weeks Act for a national forest are not subject to location of mining claims under 30 U.S.C. § 22 (1982). Such "acquired lands" are properly distinguished from "public domain" or "public lands" withdrawn or reserved for national forest purposes which are subject to mineral entry under 16 U.S.C. §§ 475, 478 (1982).

APPEARANCES: Melvin Franzen and H. Diane Golby, pro sese.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Melvin Franzen and H. Diane Golby appeal from a March 25, 1985, decision of the California State Office, Bureau of Land Management (BLM), which declared the Skippy Lode Mining Claim, CA MC 75617, null and void ab initio because title to section 15 of T. 39 N., R. 8 W., Mt. Diablo Meridian, the site of the mining claim, had been acquired by the United States and, therefore, the land is not considered to be public domain subject to location and entry under the general mining laws.

In the statement of reasons for appeal, appellants state "[the] mine has been there for 50 years, it was worked by my Uncle until his death. I then filed on the claim in 1980 and started to work the claim." As noted in the BLM decision, a location notice and map were filed for the Skippy lode mining claim with BLM on November 17, 1980, and the file contains proofs of labor for the years 1981 through 1984.

Included in the case file is a copy of a "Title Opinion, Land Purchase," made by the United States Department of Agriculture, dated July 10, 1972, which states as follows:

An examination has been made of the title papers relating to 640 acres of land, more or less, designated as the Klatt Properties, Inc. tract, Number 71-05-ST-1, in Siskiyou and Trinity Counties, California, Klamath National Forest and Shasta-Trinity National Forest. This land has been conveyed to the United States of America under the provisions of the Act of March 1, 1911 (36 Stat. 961), as amended, the Land and Water Conservation Fund Act of 1965 (78 Stat. 897), and the Department of Interior and Related Agencies Appropriation Act, 1972 (85 Stat. 229), by deed from Klatt Properties, Inc., a Nevada corporation, dated April 25, 1972, filed for the record in Siskiyou County on May 4, 1972, and recorded in Volume 661, page 327 of the official records of Siskiyou County, California, and filed for the record in Trinity County on May 11, 1972, and recorded in Book 153, Page 1004, of the official records of Trinity County, California.

The land is more particularly described in the deed to the United States, which recites a consideration of \$ 128,000.

A copy of the deed from Klatt Properties, Inc., confirming the conveyance is included in the case file. We note that the earliest document provided by appellants concerning the mining claim is dated 1980. ^{1/}

[1] Lands acquired by the United States are not, by mere force of acquisition, open to disposal under the public land laws. In the absence of specific statutory authority to the contrary, acquired land is not subject to location under the mining law (30 U.S.C. § 22 (1982)). Maurice Duval, 68 IBLA 1 (1982); J. C. Babcock, 25 IBLA 316 (1976). But see Junior L. Dennis, 61 IBLA 8 (1981) (lands acquired under section 205 of Federal Land Policy and Management Act of 1976 are "public lands").

The lands at issue were acquired for the U.S. Department of Agriculture under the authority of the Weeks Act of March 1, 1911, ch. 186, 36 Stat. 961-963, as amended, 16 U.S.C. §§ 480, 500, 513-519, 521, 552 and 563 (1982). Development of mineral resources on lands acquired under the Weeks Act is authorized only upon such terms and for such periods as the Secretary ^{2/} may determine to be in the best interests of the United States. 16 U.S.C. § 520 (1982). Such "acquired lands" are properly distinguished from "public domain" or "public lands" withdrawn or reserved for national forest purposes which are subject to mineral entry under 16 U.S.C. §§ 475, 578 (1982). Thompson v. United States, 308 F.2d 628, 631-633 (9th Cir. 1962).

^{1/} A copy of the patent embracing the tract at issue discloses the land was originally patented out of the public domain in 1896. The land was patented without a reservation of minerals pursuant to the Act of July 25, 1866, ch. 242, 14 Stat. 239.

^{2/} Although the statute refers to the Secretary of Agriculture, the responsibility for uses of mineral deposits under this section was transferred to the Secretary of the Interior by section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1099.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

James L. Burski
Administrative Judge

R. W. Mullen
Administrative Judge.

